Supreme Court, U.S.
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No. 99-11

In The

Supreme Court of the United States

DAWNELLE BARRIS,

Petitioner,

v.

COUNTY OF LOS ANGELES,

Respondent.

On Petition For A Writ Of Certiorari To The California Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION

MARK WEINSTEIN
VEATCH, CARLSON, GROGAN & NELSON
3926 Wilshire Boulevard, Suite 200
Los Angeles, California 90010
(213) 381-2861

MARTIN STEIN
TIMOTHY T. COATES
ALISON M. TURNER
Counsel of Record
GREINES, MARTIN, STEIN & RICHLAND LLP
9601 Wilshire Boulevard, Suite 544
Beverly Hills, California 90210-5215
(310) 859-7811

Attorneys for Respondent COUNTY OF LOS ANGELES

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED

In determining what damages are available for a violation of the Emergency Medical Treatment and Active Labor Act (42 U.S.C. § 1395dd, et seq.), which incorporates substantive state law on damages, did the California Supreme Court correctly determine that a claim against a hospital for failure to stabilize a patient prior to transfer is "based on professional negligence" within the meaning of California Civil Code § 3333.2.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

JURISDICTION 1

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 1

I. THE CALIFORNIA SUPREME COURT FOLLOWED CONGRESS'S DIRECTIVE TO APPLY STATE LAW WHEN IT HELD THAT CALIFORNIA CIVIL CODE § 3333.2 APPLIES TO A FAILURE TO STABILIZE CLAIM UNDER EMTALA .. 2

II. THE CALIFORNIA SUPREME COURT DID NOT MISINTERPRET EMTALA FOR PURPOSES OF DETERMINING WHETHER CIVIL CODE § 3333.2 APPLIES, AND ITS DECISION DOES NOT CONFLICT WITH FEDERAL APPELLATE DECISIONS REGARDING STANDARDS OF LIABILITY 3

III. RATHER THAN NULLIFYING EMTALA IN CALIFORNIA, THE HOLDING OF THE CALIFORNIA SUPREME COURT IS CONSISTENT WITH CONGRESS'S INTENT IN ENACTING EMTALA 7

CONCLUSION 9

APPENDIX
STATUTES INVOLVED A-1

TABLE OF AUTHORITIES

Page

CASES

Burditt v. U.S. Dept. of Health and Human Services, 934 F.2d 1362 (5th Cir. 1991) 6

Eberhardt v. City of Los Angeles, 62 F.3d 1253 (9th Cir. 1995) 5

Power v. Arlington Hosp. Ass'n, 42 F.3d 851 (4th Cir. 1994) 7, 8

Summers v. Baptist Med. Ctr. of Arkadelphia, 91 F.3d 1132 (8th Cir. 1996) 3, 4

Vickers v. Nash Gen. Hosp., Inc., 78 F.3d 139 (4th Cir. 1996) 4

STATUTES

28 U.S.C. § 1257(a) 1

42 U.S.C. § 1395dd(b)(1)(A) 5

42 U.S.C. § 1395dd(d)(1) A-1

42 U.S.C. § 1395dd(d)(1)(A) 6, 7, A-1

42 U.S.C. § 1395dd(d)(1)(B) 6, 7, A-1

42 U.S.C. § 1395dd(d)(2)(A) 2

42 U.S.C. § 1395dd(e)(3)(A) 5

California Civil Code § 3333.2 ..... i, 1, 2, 3, 5, 6

JURISDICTION

Respondent County of Los Angeles ("County") does not contest this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

The County incorporates by reference the description of the substantive and procedural facts of this action set forth in the published opinion of the California Supreme Court. Petitioner's Appendix ("Pet. App.") A.

REASONS FOR DENYING THE WRIT

This writ should be denied because (1) the question presented is one of state law, not federal, in that the damages recoverable for violation of the Emergency Medical Treatment and Active Labor Act ("EMTALA") is a question Congress expressly left to the states, (2) the California Supreme Court's decision to apply California Civil Code § 3333.2 to limit petitioner's recovery does not rest on a misinterpretation of EMTALA and in no way conflicts with federal authorities regarding standards of liability, and (3) rather than nullifying EMTALA in California, the decision is consistent with Congressional intent.

I

THE CALIFORNIA SUPREME COURT FOLLOWED CONGRESS'S DIRECTIVE TO APPLY STATE LAW WHEN IT HELD THAT CALIFORNIA CIVIL CODE § 3333.2 APPLIES TO A FAILURE TO STABILIZE CLAIM UNDER EMTALA.

Congress directed that individuals who prove injury resulting from a violation of EMTALA may "obtain those damages available for personal injury under the law of the State in which the hospital is located." Pet. App. D-2; 42 U.S.C. § 1395dd(d)(2)(A). Thus, the California Supreme Court was called upon in this action to decide whether California Civil Code § 3333.2, which limits noneconomic damages for claims against health care providers "based on professional negligence," applies to a recovery under EMTALA for injury caused by the failure to stabilize a patient prior to transferring her to another hospital. Pet. App. A-12, D-3. The court held that damages awarded on a failure to stabilize claim "were properly subject to reduction pursuant to Civil Code section 3333.2, which imposes a cap of $250,000 on the liability of a health care provider for noneconomic damages in an action based on professional negligence." Pet. App. A-21. In other words, California Civil Code § 3333.2 delineates the non-economic damages "available" in California on a failure to stabilize claim. The California Supreme Court's decision, therefore, presents no federal issue warranting this Court's review, and the petition for a writ of certiorari should be denied.

II

THE CALIFORNIA SUPREME COURT DID NOT MISINTERPRET EMTALA FOR PURPOSES OF DETERMINING WHETHER CIVIL CODE § 3333.2 APPLIES, AND ITS DECISION DOES NOT CONFLICT WITH FEDERAL APPELLATE DECISIONS REGARDING STANDARDS OF LIABILITY.

Petitioner contends the California Supreme Court's holding rests on a misinterpretation of EMTALA. Specifically, she faults the California Supreme Court for equating a failure to stabilize claim under EMTALA with a claim for medical negligence under state law, when numerous federal courts construing EMTALA have emphasized that EMTALA is *not* a federal malpractice statute. Petition For Writ Of Certiorari ("Pet.") 12-17.

Petitioner's contention does not withstand scrutiny. A holding that a failure to stabilize claim is "based on professional negligence" within the meaning of Civil Code § 3333.2 for the limited purpose of determining what *damages* may be recovered does not trespass into federal territory where the standard of *liability* is determined. The many authorities petitioner cites as conflicting with the California Supreme Court's decision in this case emphasize that EMTALA is not a federal malpractice statute in order to distinguish between common law and statutory standards of proof with respect to liability. "Something more than or different from negligence must be shown, but what is that 'something'?" the Eighth Circuit asked in *Summers v. Baptist Med. Ctr. of Arkadelphia*, 91 F.3d 1132, 1138 (8th Cir. 1996). The answer (with respect to a failure to stabilize claim) is that a plaintiff is required to prove, among other things, "actual

knowledge of the individual's unstabilized emergency medical condition," i.e., to satisfy something more than the "should have known" negligence standard. *Id.* at 1140; *see also, e.g., Vickers v. Nash Gen. Hosp., Inc.*, 78 F.3d 139, 145 (4th Cir. 1996) (EMTALA obligates hospitals only "to stabilize conditions they actually detect . . . [and] does not hold hospitals accountable for failing to stabilize conditions of which they should have been aware"); *Eberhardt v. City of Los Angeles*, 62 F.3d 1253, 1259 (9th Cir. 1995) (no obligation to stabilize undetected suicidal tendencies).

In line with the federal authorities cited by petitioner, the California Supreme Court clearly recognized that "something more than" negligence must be shown to prove a failure to stabilize claim under EMTALA and that an EMTALA claim is "not identical to a state malpractice claim." Pet. App. A-16.

> Proof of professional negligence does not suffice as proof of violation of EMTALA. EMTALA differs from a traditional state medical malpractice claim principally because it also requires *actual knowledge* by the hospital that the patient is suffering from an emergency medical condition and because it mandates only stabilizing treatment, and only such treatment as ~~can be~~ *provided within the staff and facilities available at the hospital*. EMTALA thus imposes liability for failure to stabilize a patient only if a emergency medical condition is actually discovered, rather than for negligent failure to discover and treat such a condition. In addition, EMTALA imposes only a limited duty of medical treatment: a hospital need provide only sufficient care, within its

> capability, to stabilize the patient, not necessarily to improve or cure his or her condition. Once the medical condition is stabilized, the hospital may discharge or transfer the patient without limitation.

Pet. App. A-10 (emphasis in original).

However, the California Supreme Court found sufficient overlap between requirements of proof under EMTALA and a cause of action for professional negligence under state law to bring the EMTALA claim within the scope of Civil Code § 3333.2 for the purpose of determining what damages a plaintiff could recover for an EMTALA violation. As the court noted, under the terms of EMTALA, to prove a failure to stabilize claim a plaintiff must prove that the hospital, within its capabilities, did not provide the necessary stabilizing treatment for transfer or discharge. Pet. App. A-9, D-1; 42 U.S.C. § 1395dd(b)(1)(A). EMTALA defines "to stabilize" as "to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility." Pet. App. D-2; 42 U.S.C. § 1395dd(e)(3)(A). On the basis of this definition, the California Supreme Court determined, "The standard of 'reasonable medical probability' is an objective one, inextricably interwoven with the professional standard for rendering medical treatment." Pet. App. A-16. "[T]o determine whether material deterioration of the patient's condition was reasonably likely to occur," i.e., whether the plaintiff has proved the hospital did not provide the necessary stabilizing treatment within its capabilities and

so caused death or injury, a trier of fact would necessarily have to resort to the testimony of medical experts and to consider prevailing medical standards (as it did in this case). Pet App. A-4, A-17; *see also, Burditt v. U.S. Dept. of Health and Human Services*, 934 F.2d 1362, 1369 (5th Cir. 1991) (stabilization under EMTALA requires "treatment that medical experts agree would prevent the threatening and severe consequences [of an emergency medical condition] while [the patient] . . . was in transit"). Thus, the California Supreme Court concluded, "a claim under EMTALA based on the failure to stabilize, *if brought under state law*, would constitute an action subject to Civil Code section 3333.2, i.e., an 'action for injury against a health care provider based on professional negligence.' " Pet. App. A-15.

There was no error in the California Supreme Court's reading of EMTALA for purposes of determining whether California Civil Code § 3333.2 applies. Not surprisingly, EMTALA expressly contemplates negligent violations of its provisions by hospitals and physicians. Respondent's Appendix ("RA") A-1; 42 U.S.C. § 1395dd(d)(1)(A) and (B) (hospitals and physicians who "negligently violate[ ]" requirements are subject to civil penalties). The purported misinterpretation of EMTALA which petitioner asserts as grounds for certiorari did not occur to precipitate a conflict in the law. The petition for a writ of certiorari should therefore be denied.

III

RATHER THAN NULLIFYING EMTALA IN CALIFORNIA, THE HOLDING OF THE CALIFORNIA SUPREME COURT IS CONSISTENT WITH CONGRESS'S INTENT IN ENACTING EMTALA.

Petitioner complains that the California Supreme Court's holding effectively nullifies EMTALA in California because a plaintiff is entitled to "no additional or different relief than is obtainable in connection with a medical negligence claim." Pet. 18. In her view, with the cap on noneconomic damages, California plaintiffs will have no incentive to bring a failure to stabilize claim, and Congress's purpose of deterring the proscribed conduct will be defeated. *Id.* at 18-19.

As a threshold matter, the enforcement of EMTALA, including its stabilization requirement, does not stand or fall on whether individual litigants deem it financially worthwhile to sue under its provisions, since violations of EMTALA may also result in civil penalties and exclusion from participation in federal and state health care programs. RA A-1; 42 U.S.C. § 1395dd(d)(1)(A) and (B).

More significantly, the fact that a plaintiff may not be able to obtain "additional or different relief" on her federal claim than she can on a state medical negligence claim is consistent with what Congress intended when it directed that state law be controlling with respect to damages. Agreeing with the Fourth Circuit's decision in *Power v. Arlington Hosp. Ass'n*, 42 F.3d 851 (4th Cir. 1994), the California Supreme Court was "persuaded that Congress's choice of the term 'personal injury' was intended to be inclusive, i.e., to incorporate not only any *general*

provisions for personal injury damages, but also any *specific* provisions, such as limits applicable to malpractice damages." Pet. App. A-12-A-13 (citation omitted). As the court explained, "[T]he apparent intent of Congress was to balance the deterrence and compensatory goals of EMTALA with deference to the ability of states to determine what limits are appropriate in personal injury actions against health care providers. Thus, the legislative history suggests that in drafting EMTALA to incorporate state law limits on personal injury damages, Congress was specifically responding to concern 'regarding "the potential impact of these enforcement provisions on the current medical malpractice crisis" ' (*Power, supra,* 42 F.3d at p. 862, quoting H.R. Rep. No. 99-241, 1st Sess., pt. 3, at p. 6 (1986).)." Pet. App. A-13. In other words, the California Supreme Court was rightly in accord with the Fourth Circuit's view that " 'Congress apparently wished to preserve state-enacted ceilings on the amount of damages that could be recovered in EMTALA'." *Id.*

In sum, petitioner's effort to convince this Court that her petition presents an important question requiring resolution should be rejected because the holding of the California Supreme Court in this case neither nullifies EMTALA nor thwarts Congressional intent. The petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

VEATCH, CARLSON, GROGAN & NELSON
MARK WEINSTEIN

GREINES, MARTIN, STEIN & RICHLAND LLP
MARTIN STEIN
TIMOTHY T. COATES
ALISON M. TURNER
Counsel of Record

Attorneys for Respondent County of Los Angeles

APPENDIX

STATUTES INVOLVED

42 U.S.C. § 1395dd

The relevant portions of § 1395dd are in Appendix D of the petition, except for the following here included for this Court's convenience.

(d) Enforcement

(1) Civil money penalties

(A) A participating hospital that negligently violates a requirement of this section is subject to a civil money penalty of not more than $50,000 (or not more than $25,000 in the case of a hospital with less than 100 beds) for each such violation . . .

(B) . . . any physician who is responsible for the examination, treatment, or transfer of an individual in a participating hospital, including a physician on-call for the care of such an individual, and who negligently violates a requirement of this section, . . . is subject to a civil money penalty of not more than $50,000 for each such violation and, if the violation is gross and flagrant or is repeated, to exclusion from participation in this subchapter and State health care programs. . . .